

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMERICAN STATES INSURANCE
COMPANY, an Indiana corporation; and
FIRST NATIONAL INSURANCE
COMPANY OF AMERICA, a New
Hampshire corporation,

Plaintiffs,

v.

GREAT AMERICAN INSURANCE
COMPANY, an Ohio corporation,

Defendant.

GREAT AMERICAN INSURANCE
COMPANY, an Ohio corporation,

Counter-plaintiff,

v.

AMERICAN STATES INSURANCE
COMPANY, an Indiana corporation; and
FIRST NATIONAL INSURANCE
COMPANY OF AMERICA, a New
Hampshire corporation,

Counter-defendants.

No. 2:17-cv-01200-RSL

STIPULATION AND ~~PROPOSED~~
ORDER TO EXTEND DISCOVERY
CUTOFF FOR LIMITED PURPOSES

Note on Motion Calendar: June 1,
2018

Pursuant to Fed. R. Civ. P. 16(b)(4) and LCR 16(b)(5), Plaintiffs/Counter-defendants American States Insurance Company and First National Insurance Company of America (collectively, "Plaintiffs" or "ASIC") and Defendant/Counter-plaintiff Great American Insurance Company ("Defendant" or "GAIC"), by and through their undersigned counsel of record, hereby stipulate and move the court to continue the deadline for specific discovery to be completed in this matter as described below.

I. FACTS

The discovery cutoff for this matter is June 3, 2018. *See* Dkt. 19. Trial is set for October 18, 2018. The parties have to date exchanged Initial Disclosures, written discovery, and exchanged documents. Expert reports have been exchanged. As of June 1, 2018, two expert witnesses will have been deposed. One out-of-state ASIC company representative was deposed on May 31, 2018.¹ The documents supporting GAIC's counterclaim are voluminous, and were produced on March 20, 2018.² A number of topics regarding which GAIC has requested testimony required review of those documents. Further, the parties have worked through substantive disputes regarding the production of some documents by ASIC, arriving at an agreement that would allow production and avoid motion practice on May 30, 2018. A number of topics regarding which GAIC requests testimony require preparation on topics that are the subject of the May 30, 2018, agreement. Finally, one category of documents requested by GAIC, documents held by ASIC regarding the underwriting of insurance policies issued to Sea Shepherd's underwriting, will be either produced subject to the May 30, 2018, agreement, or Sea Shepherd will oppose GAIC's pending motion to compel (Dkt. 61). GAIC has

¹ GAIC asserts the right to depose this witness further with respect to documents produced after the deposition. ASIC does not agree.

² As discussed by ASIC in Dkt. 48. The Court denied the motion, but allowed ASIC until May 21, 2018, to serve its expert's report. GAIC opposed ASIC's motion. Dkt. 48.

requested that an ASIC representative testify regarding those underwriting materials, and this deposition must await either production of the documents or this Court's ruling on Sea Shepherd's opposition, if filed.

Upcoming Discovery:

- Deposition of Frank Cordell, ASIC expert witness; expert report provided May 21, 2018;
- Deposition of two ASIC company representatives pursuant to Fed. R. Civ. P. 30(b)(6), first requested May 4, 2018;
- Deposition of GAIC's non-retained experts (seven); first disclosed April 4, 2018; and
- Response to Subpoenas Duces Tecum by GAIC's non-retained experts.

GAIC's non-retained experts were designated as "may calls" on issues reliant upon the production of the documents on March 20, 2018 and June 1, 2018. As stated, ASIC's expert witness on the same topic completed his report on May 21, 2018. Meanwhile, the witnesses were contacted by ASIC counsel following designation. Those witnesses who responded to requests for deposition dates were unavailable prior to the discovery cutoff;³ one witness indicated that he did not have the records that would allow him to testify as designated, some witnesses failed to respond to the request for deposition dates, and other witnesses resisted deposition for personal reasons or otherwise.⁴ ASIC issued subpoenas duces tecum that could obviate the need for deposition, but two witnesses have objected to those subpoenas, and deposition may be necessary.⁵ One witness requested additional

³ One witness was available on two dates counsel in this case were unavailable.

⁴ Declaration of Lisa C. Neal ("Neal Decl") ¶ 2.

⁵ Neal Decl. ¶ 3. The objections lodged stem from the witnesses' assertion that GAIC, not the witness, should produce the documents; the same documents have been requested from GAIC, and production is due June 1, 2018. *Id.*

1 time to respond (until mid-June).⁶ None of the witnesses have yet responded to the
2 subpoenas duces tecum, which set a deadline of June 1, 2018.⁷ Additional time is needed
3 to allow for the orderly scheduling of these witnesses.

4 Counsel Schedules

5 **ASIC Counsel Unavailability:**

6 June 14

7 July 12 – 30

8 August 10

9 Trial weeks

10 September 4, 2018

11 September 10, 2018

12 October 1, 2018

13 **GAIC Counsel Unavailability:**

14 June 7-18

15 July 20

16 August 11-18

17 **Trial Date:**

18 October 1, 2018

19 To facilitate the orderly scheduling of the remaining contemplated depositions
20 among the parties, their counsel and non-party witnesses and their respective counsel, the
21 parties request that the discovery cut-off be extended to September 15, 2018, for the
22 discovery outlined above, only.
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25 ⁶ *Id.*

26 ⁷ *Id.*

I. AGREEMENTS UNDERLYING STIPULATION

The parties have agreed that ASIC will offer company representatives in response to GAIC's Fed. R. Civ. P. 30(b)(6) notices of deposition by June 29, 2018. This agreement is subject to whether or not Sea Shepherd objects to production of its underwriting information and opposes GAIC's pending motion to compel; in that event, the parties will schedule the deposition following the Court's ruling, but before September 15, 2018.

ASIC has also agreed to two tentative dates for deposition of its expert witness Frank Cordell for deposition in June (June 15 or June 22). The parties will work cooperatively in scheduling the depositions of non-retained experts, with the goal being completion of the depositions by July 31, 2018, with scheduling up to September 15, 2018 allowed if necessary.

II. ARGUMENT

The Court may amend the case schedule for "good cause." "Good cause" is a non-rigorous standard that has been construed broadly across procedural and statutory contexts." *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010). Courts often focus on whether the party (or parties) seeking to modify the pre-trial scheduling order have been diligent. *Johnson Mammoth Recreations, Inc.* 975 F.2d 604, 607-08 (9th Cir. 1992).

Good cause exists to extend the discovery deadline for the discovery listed above. The parties have been diligent in conducting the discovery described above, and have worked together to fashion production and disclosures to date. Completing the discovery outlined above by the date requested is not likely to impede consideration of motions for summary judgment prior to trial. The parties do not request alteration to any other deadlines.

The parties request that the Court grant this Motion and order that the discovery outlined above be completed by September 15, 2018.

DATED: June 1, 2018

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By s Timothy B. Fitzgerald
Timothy B. Fitzgerald, WSBA No. 45103
Leslie E. Barron, WSBA No. 50792
600 University Street, Suite 2700
Seattle, WA 98101-3143
Tel: (206) 467-1816 / Fax: (206) 624-5128
tfitzgerald@mcnaul.com
lbarron@mcnaul.com
Attorneys for Defendant

1 DATED: June 1, 2018

BATESCAREY LLP

3 By s/ Michael T. Skoglund per email authority

4 Michael T. Skoglund, *pro hac vice*

5 Jonathan A. Cipriani, *pro hac vice*

6 Ommid C. Farashahi, *pro hac vice*

191 N. Wacker, Suite 2400

Chicago, IL 60606

Tel: (312) 762-3100

7 mskoglund@BatesCarey.com

8 [jcupriani@BatesCarey.com](mailto:jcipriani@BatesCarey.com)

ofarashahi@batescarey.com

9 **ORDER**

10 Pursuant to the foregoing Stipulation, it is hereby ORDERED that the discovery
11 cutoff is extended through September 15, 2018, for the following discovery:

12 Deposition of Frank Cordell, ASIC expert witness; expert report provided May 21,
13 2018;

14 Deposition of two ASIC company representatives pursuant to Fed. R. Civ. P.
15 30(b)(6), first requested May 4, 2018;

16 Deposition of GAIC's non-retained experts (seven); first disclosed April 4, 2018;
17 and

18 Response to Subpoenas Duces Tecum by GAIC's non-retained experts.

19 ///

1 IT IS SO ORDERED.

2 DATED this 6th day of June, 2018.

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5 The Honorable Robert S. Lasnik
6 United States District Court Chief Judge

7 Presented by:
8 McNAUL EBEL NAWROT & HELGREN PLLC

9 By s/ Timothy B. Fitzgerald

10 Timothy B. Fitzgerald, WSBA No. 45103
11 Leslie E. Barron, WSBA No. 50792
12 600 University Street, Suite 2700
13 Seattle, WA 98101-3143
14 Tel: (206) 467-1816 / Fax: (206) 624-5128
15 tfitzgerald@mcnaul.com
16 lbarron@mcnaul.com
17 *Attorneys for Defendant*
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20
21
22
23
24
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